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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,798	04/25/2005	Takehiko Kishikawa	2005_0600A	5653
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COURSON, TANIA C				
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2841				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/532,798

Applicant(s)

KISHIKAWA, TAKEHIKO

Examiner

TANIA C. COURSON

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

Reopening of Prosecution After Appeal

1. In view of the appeal brief filed on July 10, 2008, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.
2. To avoid abandonment of the application, appellant must exercise one of the following two options:
 - a. file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
 - b. request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1,130, 1.131, or 1.132) or other evidence are permitted. See 37 CFR 1.193 (b)(2).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-4 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hicks et al. (US 834,132, 1st interpretation, Fig. 1) in view of Hicks et al. (2nd interpretation, Figs. 2-4).

Hicks et al. (1st interpretation, Fig. 1) discloses a spirit-level and plumb device including the following:

With respect to claims 1-4 and 6-10:

- a) a main body frame (6) that is to be arranged along a vertical face to be measured (page 1, lines 24-28), the main body frame having a first end (Fig. 1, area near vertical casing 3) and a second end (Fig. 1, area near vertical casing 2); and a reference arm (3) connected to the first end of the main body frame so as to be perpendicular relative to the main body frame (Fig. 1); and a telescoping arm (2, 23 & 24) connected to the second end of the main body frame so as to be perpendicular relative to the main body frame (Fig. 1), wherein the reference arm and the telescoping arm extend in the same direction from the main body frame and are adapted to contact the face to be measured (Fig. 1), and wherein the telescoping arm has a slide (23) that is movable by telescoping the telescoping arm (17) and a bubble gauge (4) for determining a level of the telescoping arm (Fig. 1), the bubble gauge being mounted at a position corresponding to a reference line of the slide (18), wherein, during an inclination measurement, the telescoping arm is adjusted so that the telescoping arm is level as indicated by the bubble gauge (Fig. 1 and page 1, lines 92-96);

- b) wherein the bubble gauge determines a level of the telescoping arm in a telescoping direction (Fig. 1);
- c) the bubble gauge determines a level of the telescoping arm in a direction perpendicular to a telescoping direction (Fig. 1);
- d) wherein the bubble gauge determines a level of the telescoping arm in a direction perpendicular to a telescoping direction (Fig. 1);
- e) further comprising a driving mechanism (17) that drives a telescoping operation of the telescoping arm (Fig. 1);
- f) wherein the driving mechanism converts a rotary movement of a rotating member into a telescoping movement of the telescoping arm (Fig. 1);
- g) wherein the reference arm is provided with a protrusion (21) on a portion to be in contact with the face to be measured on an outer side of the main body frame (Fig. 1);
- h) wherein the main body frame is provided with a bubble gauge (7) for determining a level of the main body frame (Fig. 1);
- i) wherein, when the telescoping arm becomes level as indicated by the bubble gauge (Fig. 1), the inclination of the face to be measured is indicated by the slide on the telescoping arm (Fig. 1 and page 1, lines 92-96).

Hicks et al. (1st interpretation) **do not disclose** a slide scale having a reference line of graduations.

Hicks et al. (2nd interpretation) teach a spirit-level and plumb device that consists of a slide scale (14) having a reference line of graduations (page 1, lines 66-67). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the spirit-level and plumb device of Hicks et al. (1st interpretation), so as to include a slide scale having a reference line of graduations (14), as taught by Hicks et al. (2nd interpretation), in order to provide additional measurement verification when utilizing the device to acquire plumbness of the object being measured.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hicks et al. (1st interpretation) and Hicks et al. (2nd interpretation), as applied to claims 1-4 and 6-10 as stated above, and further in view of Brouillard (US 947,072).

Hicks et al. (1st interpretation) and Hicks et al. (2nd interpretation) disclose a spirit-level and plumb device, as stated above in paragraph 4.

Hicks et al. (1st interpretation) and Hicks et al. (2nd interpretation) further disclose wherein the bubble gauge can be observed from an upper side of the telescoping arm (Hicks et al., 1st interpretation, Fig. 1).

Hicks et al. (1st interpretation) and Hicks et al. (2nd interpretation), do not disclose wherein a bubble gauge can be observed from both upper and under sides of a telescoping arm.

Brouillard teaches a spirit level device that consists of wherein a bubble gauge can be observed from both upper and under sides of a telescoping arm (Figs. 2 & 3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was

made to further modify the spirit-level and plumb device of Hicks et al. (1st interpretation) and Hicks et al. (2nd interpretation), so as to include visibility of the bubble gauge from an upper and an underside, as taught by Brouillard, in order to increase visibility of the bubble gauge, thus facilitating the interpretation of levelness to a user.

6. Claims 1-4, 6-7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn (US 307,321, Figs. 1-4) in view of Hicks et al. (1st interpretation, Fig. 1).

Osborn (Figs. 1-4) discloses a combination device including the following:

With respect to claims 1-4, 6-7 and 9-10:

- a) a main body frame (A) that is to be arranged along a vertical face to be measured (Fig. 1 and page 1, lines 19-28), the main body frame having a first end (Fig. 1, area near fixed head B) and a second end (Fig. 1, area near sliding head C); and a reference arm (E, B & F) connected to the first end of the main body frame so as to be perpendicular relative to the main body frame (Fig. 1); and a telescoping arm (E, C & F) connected to the second end of the main body frame so as to be perpendicular relative to the main body frame (Fig. 1), wherein the reference arm and the telescoping arm extend in the same direction from the main body frame and are adapted to contact the face to be measured (Fig. 1 and page 1, lines 19-28), and wherein the telescoping arm has a slide scale (E) that is movable by telescoping the telescoping arm (Fig. 1), a reference line of graduations of the slide scale (page 1, lines 64-68);

- b) further comprising a driving mechanism (g) that drives a telescoping operation of the telescoping arm (Fig. 2);
- c) wherein the driving mechanism converts a rotary movement of a rotating member into a telescoping movement of the telescoping arm (Fig. 2).

Osborn does not disclose a bubble gauge for determining a level of a telescoping arm, the bubble gauge being mounted at a position corresponding to a reference line, during an inclination measurement, a telescoping arm is adjusted so that the telescoping arm is level as indicated by the bubble gauge, wherein the bubble gauge determines a level of the telescoping arm in a telescoping direction; the bubble gauge determines a level of the telescoping arm in a direction perpendicular to a telescoping direction; wherein the main body frame is provided with a bubble gauge for determining a level of the main body frame; and wherein, when the telescoping arm becomes level as indicated by the bubble gauge, the inclination of the face to be measured is indicated by the slide on the telescoping arm.

Hicks et al. (1st interpretation, Fig. 1) teach a spirit-level and plumb device that consists of a bubble gauge (4) for determining a level of a telescoping arm (Fig. 1), the bubble gauge being mounted at a position corresponding to a reference line (17), during an inclination measurement, a telescoping arm is adjusted so that the telescoping arm is level as indicated by the bubble gauge (Fig. 1 and page 1, lines 92-96), wherein the bubble gauge determines a level of the telescoping arm in a telescoping direction (Fig. 1); the bubble gauge determines a level of the telescoping arm in a direction perpendicular to a telescoping direction (Fig. 1); wherein the

main body frame is provided with a bubble gauge (7) for determining a level of the main body frame (Fig. 1); and wherein, when the telescoping arm becomes level as indicated by the bubble gauge (Fig. 1), the inclination of the face to be measured is indicated by the slide on the telescoping arm (Fig. 1 and page 1, lines 92-96). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the combination device of Osborn, so as to include a bubble gauge on the telescoping arm and on the main body (Fig. 1), as taught by Hicks et al. (1st interpretation), in order to provide facility in visibility of levelness when utilizing the device to acquire plumbness of the object being measured.

7. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn and Hicks et al. (1st interpretation, Fig. 1), as applied to claims 1-4, 6-7 and 9-10 as stated above, and further in view of Brouillard (US 947,072) and Tiffany (US 1,581,249).

Osborn and Hicks et al. (1st interpretation) disclose a combination device, as stated above in paragraph 6.

Osborn and Hicks et al. (1st interpretation) further disclose wherein the bubble gauge can be observed from an upper side of the telescoping arm (Hicks et al., 1st interpretation, Fig. 1).

Osborn and Hicks et al. (1st interpretation) do not disclose wherein a bubble gauge can be observed from both upper and under sides of a telescoping arm and wherein an arm is provided with a protrusion on a portion to be in contact with the face to be measured on an outer side of a main body frame.

Brouillard teaches a spirit level device that consists of wherein a bubble gauge can be observed from both upper and under sides of a telescoping arm (Figs. 2 & 3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the combination device of Osborn and Hicks et al. (1st interpretation), so as to include visibility of a bubble gauge from an upper and an underside, as taught by Brouillard, in order to increase visibility of the bubble gauge, thus facilitating the interpretation of levelness to a user.

Tiffany teaches a spirit level device that consists of wherein an arm is provided with a protrusion (18) on a portion to be in contact with the face to be measured on an outer side of a main body frame (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the combination device of Osborn and Hicks et al. (1st interpretation), so as to include a protrusion on an arm, as taught by Tiffany, in order to bear against a face to be measured, thus increasing stability of the device.

Response to Arguments

8. Applicant's arguments filed on July 10, 2008 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose a leveling device:

Sanchez (US 4,995,167)

Bernard (US 4,067,117)

Simon (US 1,789,344)

Serkey (US 1,459,381)

L'Heureux (US 986,924)

Welsh (US 445,646)

Martin (US 423,484)

Marston (US 140,055)

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239.

The examiner can normally be reached on Monday-Friday from 7:30AM to 2PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard, can be reached on (571) 272-1984.

The fax number for this Organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TCC
January 14, 2009

/Dean A. Reichard/
Supervisory Patent Examiner, Art Unit 2841